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July 5, 1999

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via facsimile and regular mail

Ruth Heilizer, Esq.
Federal Election Commission
Washington, DC 20563

Re: Washington State Republican Party
California Medical Association case
Our File No: 9509.004

Dear Ms. Heilizer:

Thank you for referring me to the follow-up district court opinion in *Federal Election Commission v. California Medical Association*. I have reviewed the opinion, particularly the portion regarding the "knowingly" issue under 2 U.S.C. §441a(f). The facts of that case are substantially different from the present case. The committee in *California Medical Association* was relying on an error of law defense. Whether administrative support qualifies as a "contribution" under the FECA was, and is, a question of law. There was little doubt that the committee "knew," as a matter of fact, that the support came from the association. The only issue was the legal consequence.

In contrast, the WSRP did not "know," as a matter of fact, that its transfers to its federal account exceeded the allocable portion because its longstanding bookkeeping system had broken down. The calculation of the amount to be transferred is factual in nature.

Nor is the court's observation concerning *California Medical Association*'s accounting system apposite to the WSRP case. *California Medical Association* made no effort to segregate or track its funds to determine what money was used to influence federal campaigns. The court's conclusion that a complete failure to document federal expenditures and contributions would not operate as a defense is unsurprising. In contrast, not only did the WSRP have a system, but the system had worked well for nearly two decades. A finding that the WSRP did not knowingly accept ineligible contributions by the transfer to cover allocable expenditures would not enable committees to flaunt federal election laws. To avoid liability, the committee would have to show an established system, unexpected circumstances and the isolated breakdown of that system. Past compliance history would also be relevant in determining whether the error in calculation were isolated.

As you have noted, the facts presented here are unusual. The Commission should not rely on mathematical formulae to make the determination of the sanction. The desire to maintain a standard ratio for "excess allocation" cases should not override the unique fact pattern presented, nor the potential hazards of litigating whether an isolated computational error, even if large, constitutes a "knowing" acceptance of ineligible funds.

Very truly yours,

LIVENGOOD, CARTER, TJOSSEM,
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